

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HERMAN OVERPECK, et al.,

Plaintiffs,

v.

FEDEX CORPORATION, et al.,

Defendants.

Case No. 18-cv-07553-PJH

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO FILE
UNDER SEAL**

Re: Dkt. No. 198

Before the court is defendant FedEx Ground Package System, Inc.'s ("FedEx Ground") motion to file under seal. The documents FedEx Ground seeks to file under seal are a sample base contract for linehaul services, a provider agreement between FedEx Ground and G2 Logistics, Inc. ("G2"), a schedule for that provider agreement, and settlement statements issued by FedEx Ground to G2 recording payments based on plaintiff Overpeck's driving. Id. at 3. The other parties do not oppose this request.

There is a general presumption in favor of public access to federal court records. Nixon v. Warner Commc'ns, Inc., 435 U.S. 589, 597 (1978). "[T]he proponent of sealing bears the burden with respect to sealing. A failure to meet that burden means that the default posture of public access prevails." Kamakana v. City & Cty. of Honolulu, 447 F.3d 1172, 1182 (9th Cir. 2006). When a request to seal documents is made in connection with a motion, the court must determine whether the parties are required to overcome that presumption with "compelling reasons" or with "good cause." A party seeking to seal materials submitted with a motion that is "more than tangentially related to the merits of the case"—regardless whether that motion is "technically dispositive"—must demonstrate

that there are compelling reasons to keep the documents under seal. Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1101–02 (9th Cir. 2016). Conversely, if the motion is only tangentially related to the merits, “a ‘particularized showing,’ under the ‘good cause’ standard of Rule 26(c) will ‘suffice[] to warrant preserving the secrecy of sealed discovery material attached to non-dispositive motions.” Kamakana, 447 F.3d at 1180 (alteration in original) (quoting Foltz v. State Farm. Mut. Auto. Ins. Co., 331 F.3d 1122, 1135, 1138 (9th Cir. 2003)).

Here, defendant FedEx Ground argues that there is no compelling public interest that would be hindered by sealing the documents filed under seal with the motion. Dkt. 198 at 3–4. FedEx Ground contends the compelling interest standard is met because the documents to be sealed contain FedEx Ground’s confidential, proprietary, and trade secret information. Id. at 4.

Defendant G2’s motion to dismiss, Dkt. 195, is more than tangentially related to the merits of the case and therefore the court applies the compelling reasons standard to the motion to file under seal. FedEx Ground seeks to file two contracts and a schedule to one of the contracts entirely under seal. See Dkts. 198-3, 198-5, 198-7. For the reasons discussed in this court’s order denying without prejudice FedEx Ground’s prior motion to file under seal, see Dkt. 180 at 12–15, FedEx Ground’s proposed material to be sealed is not narrowly tailored, see Civ. L.R. 79-5(b). If FedEx Ground were to demonstrate compelling reasons to file under seal and the request is narrowly tailored, then it may file those portions of its contract which are proprietary, confidential, or a trade secret under seal. For that reason, the court will deny without prejudice the motion as to those documents and permit FedEx Ground to refile its motion.

The fourth document FedEx Ground seeks to file under seal is of a different kind than the contracts and schedule. Dkt. 198-9. This document includes settlement statements that list information regarding financial transactions between FedEx Ground and G2. Defendant argues that the settlement statements are confidential because they list information regarding financial transactions between FedEx Ground and G2, including

1 information regarding negotiated rates for payment to G2 for its services. Dkt. 198 at 4.
2 According to FedEx Ground, its competitors could obtain an unfair advantage if they
3 know the rates at which FedEx Ground pays its contracted service providers ("CSPs").

4 Unlike the contracts and schedule, the settlement statements show the rate at
5 which FedEx Ground pays its CSPs and a narrowly tailored redaction would encompass
6 the entire document. This document meets the compelling interest standard and sealing
7 the entire document is warranted.

8 Accordingly, the court DENIES WITHOUT PREJUDICE FedEx Ground's motion
9 with respect to the first through third documents and GRANTS FedEx Ground's motion
10 with respect to the fourth document. FedEx Ground may refile its motion to file under
11 seal within fourteen days of the date on which this order is filed.

12 **IT IS SO ORDERED.**

13 Dated: December 15, 2020

14 /s/ Phyllis J. Hamilton

15 PHYLLIS J. HAMILTON
16 United States District Judge
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